#22

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FragranceNet.com, Inc.,

Plaintiff,

- against -

FragranceX.com Inc. and John Does 1-20

Defendant.

CV 06 2225 (JFB) (AKT)

AFFIDAVIT OF REBECCA MYERS IN SUPPORT OF FRAGRANCENET'S MOTION FOR LEAVE TO FILE ITS THIRD AMENDED COMPLAINT

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

REBECCA MYERS, being duly sworn, deposes and says:

1. I am an associate in the law firm of Paul, Hastings, Janofsky & Walker LLP, attorneys for Plaintiff FragranceNet.com, Inc. and submit this affidavit in support of Plaintiff's motion for leave to file its Third Amended Complaint, a copy of which is annexed hereto as Exhibit A.

2. Annexed hereto as Exhibit B is a true and correct copy of a letter from Rebecca Myers to David Rabinowitz dated March 14, 2007 requesting defendant's consent to FragranceNet's filing its Third Amended Complaint without seeking leave of the Court.

3. Annexed hereto as Exhibit C is a true and correct copy of a letter from David Rabinowitz to Rebecca Myers dated March 16, 2007 stating that defendant will not consent to FragranceNet's filing its Third Amended Complaint.

4. Thereafter, the parties requested a pre-motion conference and FragranceNet made

some revisions to its proposed amended complaint based on its counsel's further investigation.

5. The parties jointly requested that the pre-motion conference be adjourned so that defendant could consider whether it wished to oppose the filing of the proposed Third Amended Complaint. Annexed hereto as Exhibit D is a true and correct copy of a letter from David Rabinowitz to Hon. Joseph F. Bianco dated March 18, 2007 requesting an adjournment to April 25, 2007.

6. Defendant maintained its refusal to consent to FragranceNet's filing of the proposed Third Amended Complaint. A pre-motion conference was held on April 25, 2007, at which time a briefing schedule was set.

Rebecca Myers

Rebecca Myers

Sworn to before me this
4th day of May, 2007

Notary Public

FRANK NUNZIO DAGOSTINO
NOTARY PUBLIC, State of New York
No. 01DA4996102
Qualified in New York County
Commission Expires May 11, 2010

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that she has caused to be served via overnight mail a true and correct copy of the foregoing AFFIDAVIT OF REBECCA MYERS IN SUPPORT OF FRAGRANCENET'S MOTION FOR LEAVE TO FILE ITS THIRD AMENDED COMPLAINT on this 4th day of May, 2007, on the following counsel of record:

David Rabinowitz, Esq.
Moses & Singer LLP
405 Lexington Avenue
New York, New York 10174-1299

The above is the address designated by said attorneys for service.

Rebecca K. Myers

EXHIBIT A

PAUL, HASTINGS, JANOFSKY & WALKER LLP
Robert L. Sherman (RS 5520)
Rebecca Myers (RM8437)
75 East 55th Street
New York, NY 10022
(212) 318-6000

Attorneys for Plaintiff FragranceNet.com, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FragranceNet.com, Inc., Plaintiff, - against - FragranceX.com Inc. and John Does 1-20 Defendant.	CV 06 2225 (JFB) (AKT) **[PROPOSED] THIRD AMENDED COMPLAINT** **JURY TRIAL REQUESTED**

Plaintiff FragranceNet.com, Inc. ("FragranceNet" or "Plaintiff"), by and through its attorneys Paul, Hastings, Janofsky & Walker LLP, as and for its Third Amended Complaint against defendants FragranceX.com ("Defendant" or "FragranceX") and John Does 1-20 ("John Does") alleges as follows, upon actual knowledge with respect to itself and its own acts and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is an action to recover for the damage caused by, and to prevent further damage arising from, Defendant's and John Does' acts of copyright, trademark infringement, trademark dilution, violation of New York General Business Law §133, state law dilution, injury to business reputation, common law unfair competition and misappropriation, passing off and unjust enrichment.

2. FragranceNet owns and operates an on-line retail store that sells perfumery and related products. This action arises out of Defendant's taking, misappropriating and copying more than nine hundred (900) photographs from FragranceNet's Web site for use on its competing Web site for sales of perfume and related products, the use of FragranceNet's trademark in the metatags underlying its Web site and Defendant's bidding on, purchase and use of keywords in Google's Adwords program with the full knowledge that they will cause Defendant to appear as a "Sponsored Link" when a consumer types "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark into an Internet keyword search. Defendant's acts are without permission from or compensation to FragranceNet. Defendant has generated substantial revenue as a result of the use of FragranceNet's photographs and trademark to FragranceNet's great and irreparable harm.

3. On information and belief, Defendant also has provided the Photographs to others for use in connection with the sale or distribution of perfumery and related products. The identities of those entities currently are unknown, and are listed as defendants John Does 1-20 herein. On discovery of the true identities of John Does 1-20, plaintiff intends to amend this complaint to list them as parties. On information and belief, Defendant and John Does 1-20 have generated substantial revenue as a result of their use of the Photographs, to FragranceNet's great and irreparable harm.

4. FragranceNet seeks preliminary and permanent injunctive relief and compensatory and punitive damages based on Defendant's and John Does' copyright infringement, Defendant's contributory infringement thereto, and Defendant's acts of trademark infringement, dilution, misappropriation, and unfair competition in violation of the laws of the United States and the State of New York.

5. This action arises under the copyright laws of the United States, 17 U.S.C. § 101 *et seq*., the trademark, unfair competition and dilution laws of the United States, Sections 43(a) and 43(c) of the Lanham Act, 15 U.S.C. § 1125(a) and (c), under § 133 of the New York Business Laws as well as the common law of the State of New York.

PARTIES

6. FragranceNet is a Delaware corporation having its principal place of business at 104 Parkway Drive South, Hauppauge, NY 11788.

7. On information and belief, defendant FragranceX is a New York corporation having a business address of 49-09 5th Street, Long Island City, NY 11101.

8. On information and belief, defendants John Does 1-20 are entities or individuals associated or affiliated with defendant FragranceX and which, or who, participated in the wrongful acts and infringement alleged herein.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

10. This Court has personal jurisdiction over FragranceX because it resides in this district and because Defendant's and John Does' tortious conduct takes place and causes FragranceNet injury in this state and district.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

12. FragranceNet is in the business of selling perfumery and related goods via its on-line retail store posted at www.fragrancenet.com. That Web site has been in operation since

January 1997, and, by virtue of FragranceNet's efforts and expenditures, has become one of the most successful on-line perfume stores in the United States.

13. FragranceNet has expended significant time, effort and money to develop its on-line retail store.

14. In developing its business, FragranceNet has created hundreds of photographs of the products it offers for sale. The background, arrangement, lighting, use of shadow, angle and selection of products within each line to be included within the photographs are among the original elements contributed to the photographs.

15. FragranceNet is the author and copyright owner with respect to the photographs, which are displayed on its Web site so that consumers may see what is offered for sale, and to reassure consumers that they are purchasing genuine and high quality products.

16. FragranceNet registered its rights in and to more than 3,200 of the photographs and obtained from the Register of Copyrights, Certificates of Copyright Registration Nos. VA 1-340-784, VA 1-340-783, and VA 1-340-782, dated February 21, 2006. Copies of the foregoing registration certificates are annexed hereto as Exhibit A.

17. FragranceNet is, and at all relevant times has been, the owner of the copyrights in and to the photographs.

18. At some time prior to August 1, 2005, without FragranceNet's authorization, Defendant copied more than nine hundred (900) copyrighted photographs (the "Photographs") from FragranceNet's Web site and posted them on the Web site of its competing on-line fragrance store, www.fragranceX.com. Annexed hereto as Exhibit B are representative examples of the Photographs, each followed by a screenshot from Defendant's Web site showing Defendant's infringing copy of the Photograph. Annexed hereto as Exhibit C is a list of the

infringing photographs, by brand and the gender for which the product is intended. On information and belief, Defendant posts only one photo per product on its Web site.

19. On August 1, 2005, FragranceNet formally notified Defendant that it was infringing FragranceNet's rights in and to its copyright protected Photographs and demanded that Defendant cease and desist from all further infringement. At that time, Defendant failed and refused to do so.

20. On November 21, 2005, Defendant advised FragranceNet that, regardless of whether FragranceNet brought an action against it for copyright infringement, Defendant intended to complete a full-scale revision of its Web site by April 1, 2006 which would include removal of the infringing photographs.

21. For months FragranceNet attempted to resolve the copyright infringement matter, but to no avail. In or around May 2006, when FragranceNet realized that its efforts were futile, it commenced an action for copyright infringement. FragranceNet's complaint was amended on May 24, 2006 to add claims for copyright infringement against John Does 1-20 and make other conforming changes and then again on July 27, 2006 to include a listing of the photographs, by product name, at issue in the action. Defendant served its answer to FragranceNet's Second Amended Complaint on August 7, 2006.

22. In or about December 2005 – January 2006, Defendant removed the Photographs from its Web site. Upon information and belief, the Photographs have not appeared on Defendant's Web site since February 2006.

23. Thereafter, FragranceNet discovered that Defendant inserted "fragrance net" and "fragrancenet," FragranceNet's house mark and most valued trademark, into the metatags for its Web site, including but not limited to the web pages for Defendant's home page, women's

fragrance page and men's fragrance page. Metatags are codes in the sublevel of web pages that are invisible to the average user. Metatags are used to provide an Internet search engine with information about the content of a page and are used to attract Internet search engines to a Web site and to provide the basis for ranking and displaying the results of a search that is conducted for a word or term contained in a metatag.

24. FragranceNet also discovered that when a search for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark are conducted by various search engines, including Google, an advertisement for Defendant's Web site, www.fragrancex.com, appears immediately proximate to the search results screen, accompanied by a link to Defendant's Web site. That form of advertising on Google is conducted through Google's AdWords Program and the advertisements are called "Sponsored Links." Upon information and belief, the only way to have one's Sponsored Link appear on a search results screen is by having bid on a keyword that triggers the appearance of a Sponsored Link. Sponsored Links typically appear at the very top of the screen and also in the right margin. Annexed hereto as Exhibit D is a copy of the search results screen for searches run on Google for "fragrance net" and "fragrancenet" showing Defendant as a Sponsored Link.

25. Upon information and belief, Internet search providers offering Sponsored Links programs, such as the AdWords Program offered by Google, permit an advertiser to specify whether the keywords it bids on should be applied to its Web site as a "broad match," "phrase match," "exact match" or "negative match." Google's "broad match" option is the default option. Under a "broad match," an advertiser will appear as a Sponsored Link when a search is run for its keyword and any plural or relevant variation of that keyword. "Phrase Matching" permits an advertiser to bid on a phrase such as "designer fragrance." The advertiser's

Sponsored Link will appear whenever a search is conducted for that phrase even if the phrase is used in combination with other words, such as "bad designer fragrance." An "exact match" works like a phrase match but will display the advertiser's Sponsored Link only when the exact phrase is the subject of the search, not when the phrase is run in combination with any other words. A "negative match" is treated as a reverse exact match and permits an advertiser to specify particular circumstances in which it will not trigger a Sponsored Link. For example, if an advertiser bid on the keyword "designer fragrance" and opted for a "phrase match" but did not want its Sponsored Link to appear when a consumer types in "bad designer fragrance," it could update its Google account to include a negative match for "bad designer fragrance."

26. Defendant has bid on certain keywords that cause its Sponsored Link to appear when a search is run for "fragrance net," or other variations of FragranceNet's mark. That is clear because Defendant's Web site appears as a Sponsored Link when a consumer conducts an Internet keyword search, *i.e.*, types in, "fragrance net" or other variations of FragranceNet's mark.

27. Defendant has failed and refused to use a negative match, a well-known and commonly used mechanism, to avoid having Defendant's Web site appear as a Sponsored Link when consumers run an Internet keyword search for "Fragrance Net" or other variations of Plaintiff's mark.

28. Consumers who conduct Internet keyword searches for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark are looking for FragranceNet's Web site and, to the extent that they are diverted to Defendant's Web site, such diversion is improper.

29. FragranceNet owns U.S. Trademark Application for FRAGRANCENET, Serial No. 78/715,464, and has used FRAGRANCENET in connection with its online retail sales services in the fields of perfumery, aromatherapy, candles and hair care preparations since at least January 27, 1997. FragranceNet does not and never has used FRAGRANCENET as a product name or on packaging.

30. FragranceNet markets and promotes its retail services under the mark FRAGRANCENET through widely circulated national magazines, newspaper inserts, direct mailings and other advertising venues.

31. In connection with its FRAGRANCENET mark, FragranceNet has sold millions of dollars of perfume products through its Web site, which accepts orders directly from consumers.

32. As a result of FragranceNet's extensive efforts in marketing, advertising and maintaining the high quality of its retail services, FragranceNet has acquired a reputation for high quality retail sales and customer services offered under its FRAGRANCENET mark and customers recognize the FRAGRANCENET mark as identifying the retail services provided by FragranceNet. As a result, the FRAGRANCENET mark is an asset of substantial value and evidences the goodwill of FragranceNet.

33. Upon information and belief, Defendant knew, or should have reasonably expected, that its conduct would have the consequence of misdirecting consumers to its Web site rather than to FragranceNet's Web site by providing a computer user with direct access, through a link, to its Web site despite the fact that the consumer/computer user had typed in FragranceNet's name and was searching for FragranceNet's Web site.

34. Upon information and belief, Defendant reasonably expected to receive revenue from interstate or international commerce by misdirecting consumers to its Web site rather than to FragranceNet's Web site through the use of "fragrance net" and "fragrancenet" in its metatags and through its purchase of the keywords in Google's Adwords program with the full knowledge that they will cause Defendant to appear as a Sponsored Link when a consumer conducts an Internet keyword search for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark.

35. Upon information and belief, Defendant's infringing conduct has caused confusion among persons familiar with FragranceNet's services and business and is likely to continue to cause such confusion.

36. The use of FRAGRANCENET in the metatags underlying Defendant's Web site to attract search engines to its Web site when an Internet keyword search is run for "fragrance net" or other variations of FragranceNet's mark is likely to cause confusion among members of the relevant consuming public and/or to deceive those members into believing that Defendant somehow is associated with or related to FragranceNet's retail services and/or that Defendant somehow is associated with or sponsored by FragranceNet.

37. Upon information and belief, FragranceNet has lost and will continue to lose revenue from Defendant's unauthorized use of FRAGRANCENET in the metatags underlying its Web site and through its bidding on, purchase and use of keywords in Google's Adwords program that Defendant knows will cause Defendant to appear as a Sponsored Link when an Internet keyword search is conducted for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark. Upon information and belief, FragranceNet will sustain further damages as a result of such wrongful conduct.

38. Upon information and belief, Defendant's wrongful conduct has deprived and will continue to deprive FragranceNet of opportunities for expanding its goodwill.

39. Upon information and belief, unless enjoined by this court, Defendant will continue its course of conduct and wrongfully use, infringe upon and otherwise profit from the sale of products through the unauthorized use of FragranceNet's mark.

40. As a direct and proximate result of Defendant's acts alleged herein, FragranceNet has already suffered irreparable injury and has sustained lost profits.

41. FragranceNet has no adequate remedy at law.

COUNT I
(Copyright Infringement)

42. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

43. The actions of Defendant and John Does infringe FragranceNet's exclusive rights, *inter alia*, to reproduce and distribute the Photographs, all in violation of FragranceNet's exclusive copyrights under 17 U.S.C. §§ 104(a) and 106. Such acts constitute copyright infringement under 17 U.S.C. § 501.

44. Defendant's and John Does' unlawful acts set forth above constitute willful copyright infringement.

45. Defendant's unlawful acts set forth above constitute contributory copyright infringement.

46. The actions of Defendant and John Does complained of herein have caused, are causing and, unless enjoined by the Court, will continue to cause irreparable harm, damage and injury to FragranceNet.

47. The actions of Defendant and John Does complained of herein have damaged, are damaging and will continue to damage FragranceNet in an amount to be determined at trial.

COUNT II
(Trademark Infringement)

48. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

49. Defendant has knowingly and willfully infringed Plaintiff's FRAGRANCENET trademark by the unauthorized use of "fragrance net" and "fragrancenet" in the metatags underlying Defendant's Web site and through its bidding on, purchase and use of keywords in Google's Adwords program that Defendant knows will cause Defendant to appear as a Sponsored Link when an Internet keyword search is conducted for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark.

50. Defendant's acts have caused and are likely to cause confusion or mistake by consumers with respect to Defendant's affiliation, connection or association with FragranceNet and with FragranceNet's services.

51. Defendant's activities violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and are likely to cause consumer confusion as to the origin, sponsorship or approval of Defendant's services.

52. Defendant's wrongful use of FRAGRANCENET is usurping the reputation and goodwill associated with FragranceNet's mark and constitutes unfair competition.

53. As a result, the actions of Defendant complained of herein have caused, are causing and, unless enjoined by the Court, will continue to cause irreparable harm, damage and injury to FragranceNet.

54. The actions of Defendant complained of herein have damaged, are damaging and will continue to damage FragranceNet in an amount to be determined at trial.

55. The actions of Defendant complained of herein constitute an exceptional case under 15 U.S.C. § 1117(a) of the Lanham Act.

COUNT III
(Trademark Dilution)

56. FragranceNet repeats and realleges the allegations contained in paragraphs 1- 41 of the Complaint as if fully set forth herein.

57. By reason of FragranceNet's continued use and the substantial marketing and advertising of the retail services it offers in connection with FRAGRANCENET, the FRAGRANCENET mark is widely recognized by the general consuming public as a designation of the source of FragranceNet's retail services and, as such, it is a distinctive and famous mark as defined by Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)(1).

58. Defendant's willful acts complained of herein have caused and are likely to cause dilution of FRAGRANCENET in that Defendant's unauthorized use of "fragrance net" and "fragrancenet" in the metatags underlying its Web site and the purchase of certain keywords in Google's Adwords program that will result in the unauthorized display of Defendant's Web site as a Sponsored Link when an Internet keyword search is conducted for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark are likely to lessen the ability of FRAGRANCENET to identify and distinguish FragranceNet's retail services from those of others, including those that Defendant offers, and to erode and whittle away the source-identifying qualities of FragranceNet's mark.

59. As a direct and proximate result of Defendant's actions, FragranceNet has suffered and will continue to suffer damages in an amount presently unknown, but to be determined at the time of trial.

60. FragranceNet has no adequate remedy at law.

COUNT IV
(Passing Off)

61. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

62. Defendant's acts, as set forth herein, are likely to cause consumer confusion as to the origin, sponsorship or approval of Defendant's services and constitute passing off in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT V
(Common Law Trademark Infringement)

63. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

64. Defendants acts, as set forth herein, constitute trademark infringement under the common law of the State of New York.

65. By reason of Defendant's activities complained of herein, FragranceNet has been and is being damaged by such acts, and damage will continue unless Defendant's acts are enjoined by this Court.

COUNT VI
(New York General Business Law § 133)

66. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

67. The conduct by Defendant, as alleged herein, constitutes the assumption, adoption or use in bad faith and with the intent to deceive or mislead the public, for advertising purposes or purposes of trade, of a designation or style, or a symbol or simulation thereof which may deceive or mislead the public as to the identity of Defendant or its goods and services or as to the connection of Defendant with FragranceNet, in violation of Section 133 of the New York General Business Law.

COUNT VII
(State Law Dilution)

68. FragranceNet repeats and realleges the allegations contained in Paragraphs 1-41 of the Complaint as if fully set forth herein.

69. Defendant's use of Plaintiff's FRAGRANCENET mark has diluted and is likely to dilute that mark in violation of N.Y. General Business Law § 360-l.

70. As a result, FragranceNet has and will continue to suffer damage to the value of its FRAGRANCENET mark unless remedied by this Court.

COUNT VIII
(Injury to Business Reputation)

71. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

72. Defendant's intentional acts have caused and will continue to cause FragranceNet substantial harm and irreparable injury, and will dilute the value of Plaintiff's FRAGRANCENET trademark.

73. As a result, FragranceNet has and will continue to suffer damages to the value of its business reputation and its FRAGRANCENET trademark unless remedied by this Court.

COUNT IX
(Common Law Unfair Competition and Misappropriation)

74. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

75. The acts of Defendant as alleged herein constitute unfair competition and misappropriation of FragranceNet's common law trademark rights under the laws of the State of New York and of every state in which Defendant does business, which will cause irreparable injury to FragranceNet unless enjoined by this Court. Because of the care, skill and marketing efforts used by FragranceNet, FragranceNet has acquired a reputation for quality and reliability for its retail services and consumers have come to identify the FRAGRANCENET mark as identifying retail services emanating exclusively from FragranceNet. As a result, that mark represents a valuable asset to FragranceNet.

76. Defendant has acted knowingly and with reckless disregard of FragranceNet's valuable rights, in bad faith and with the intent of deceiving the public.

77. Defendant's infringement has resulted in, is designed to and will likely cause confusion and deceive purchasers of online perfume products into believing that they are purchasing a product from FragranceNet rather than from Defendant. Defendant's use of "fragrance net" and "fragrancenet" in its metatags and participation in Google's Adwords program, by bidding on and purchasing certain keywords that will result in the unauthorized display of Defendant's Web site as a Sponsored Link when an Internet keyword search is conducted for "fragrance net," "fragrancenet.com" or other variations of FragranceNet's mark, when the products and services Defendant offers in connection with its use of those marks is not sponsored or authorized by FragranceNet, and the quality of those products and services is not

assured by FragranceNet, has caused and is causing damage to the valuable assets, reputation and goodwill of FragranceNet.

COUNT X
(Common Law Passing Off)

78. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

79. Defendant's acts, as set forth herein, are likely to cause consumer confusion as to the origin, sponsorship or approval of Defendant's services and constitute common law passing off.

COUNT XI
(Unjust Enrichment)

80. FragranceNet repeats and realleges the allegations contained in paragraphs 1 - 41 of the Complaint as if fully set forth herein.

81. As a result of Defendant's intentional acts as described herein, including through Defendant's unauthorized use of FragranceNet's mark and wrongful diversion of customers from FragranceNet's Web site to Defendant's Web site, Defendant has been unjustly enriched and has benefited at FragranceNet's expense.

82. Equity and good conscience require restitution of any sums Defendant has obtained as a result of its acts as described herein.

Demand For Relief

WHEREFORE, FragranceNet respectfully prays for judgment to be entered against Defendant and John Does:

a. preliminarily and permanently enjoining Defendant and John Does, their officers, agents, servants, employees and attorneys, and those persons acting in concert with them from further violating 17 U.S.C. § 101 *et seq*. and inducing, contributing to, causing, engaging or authorizing any individual or entity to perform any of the aforementioned acts;

b. preliminarily and permanently enjoining Defendant, its officers, agents, servants, employees and attorneys, and those persons acting in concert with it from further violating 15 U.S.C. § 1125(a) and (c) and inducing, contributing to, causing, engaging or authorizing any individual or entity to perform any of the aforementioned acts, and from engaging in common law infringement, dilution, unfair competition and misappropriation.

c. directing Defendant and John Does to account to FragranceNet for any and all gains, profits and advantages derived from Defendant's and John Does' wrongful acts complained of;

d. directing each Defendant to file with the Court and serve upon attorneys for FragranceNet within thirty (30) days after entry of any preliminary or permanent injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which it has complied with the injunction;

e. awarding damages to FragranceNet against Defendant and John Does, according to proof at trial;

f. awarding FragranceNet punitive damages in an amount to be determined at trial;

g. awarding FragranceNet its costs pursuant to 17 U.S.C. § 505;

h. finding that FragranceNet's claim for trademark infringement constitutes an exceptional case under 15 U.S.C. § 1117(a) of the Lanham Act and awarding FragranceNet its attorneys fees; and

i. granting such other and further relief as the Court deems just and proper.

JURY DEMAND

FragranceNet hereby demands a trial by jury pursuant to Fed. R. Civ. P. Rule 38.

Dated: May ___, 2007

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY
& WALKER LLP

By: ______________________________
Robert L. Sherman (RS 5520)
Rebecca Myers (RM 8437)
75 E. 55th Street
New York, New York 10022
212-318-6000

Attorneys for Plaintiff

FRAGRANCENET.COM, INC.

EXHIBIT A

Certificate of Registration

SEAL OF THE UNITED STATES COPYRIGHT OFFICE 1870

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VA 1-340-784

EFFECTIVE DATE OF REGISTRATION

Feb 21 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼
FragranceNet.com Photographs (Group 1)

NATURE OF THIS WORK ▼ See instructions
Photographs

Previous or Alternative Titles ▼
Group Registration/Photos (approximately 1975 photos in grouping)

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼
Publication as a contribution to a Web site

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

a NAME OF AUTHOR ▼
FragranceNet.com, Inc. *Employer for hire of: Anthony Hulser

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of
Domiciled in United States

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☒ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b Name of Author ▼

Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of
Domiciled in

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a Year in Which Creation of This Work Was Completed
2003 Year
This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work
Complete this information ONLY if this work has been published.
Month 12 Day approximately 20 Year 2003
United States Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
FragranceNet.com, Inc., 104 Parkway Drive South, Hauppauge, New York, NY 11788

See instructions before completing this space.

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED
FEB 21 2006
ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED
FEB 21 2006
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

*Amended by C.O. on authority of phone call from Catherine M. Clayton, Esq. on March 7, 2006.

EXAMINED BY	FORM VA
CHECKED BY	
☐ CORRESPONDENCE Yes	FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

5

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☑ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

6

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ **a**

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ **b**

7

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ Account Number ▼ **a**

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼ **b**

Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022

Area code and daytime telephone number (212) 318.6084 Fax number (212) 230.7781

Email ris@paulhastings.com

8

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶
☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☑ authorized agent of FragranceNet.com, Inc.
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Dennis M. Apfel Date 2/10/06

Handwritten signature (X) ▼

X

9

Certificate will be mailed in window envelope to this address:

Name ▼
Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP

Number/Street/Apt ▼
75 East 55th Street

City/State/ZIP ▼
New York, NY 10022

[illegible]
• Complete all necessary spaces
• Sign your application in space 8

[illegible]
1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

[illegible]
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Certificate of Registration

THE UNITED STATES COPYRIGHT OFFICE · SEAL OF THE · 1870

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

RE

VA 1-340-783

EFFECTIVE DATE

Feb 21 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼ FragranceNet.com Photographs (Group 2)

NATURE OF THIS WORK ▼ See instructions: Photographs

Previous or Alternative Titles ▼ Group Registration/Photos (approximately 846 photos in grouping)

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

Publication as a contribution to a Web site

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼ *Employer for hire of:

a FragranceNet.com, Inc. Anthony Hulser

DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile — Name of Country — OR { Citizen of ___ / Domiciled in United States

Was This Author's Contribution to the Work — Anonymous? ☐ Yes ☐ No — Pseudonymous? ☐ Yes ☐ No — If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). **See instructions**

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☒ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b **Name of Author ▼**

Dates of Birth and Death Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile — Name of Country — OR { Citizen of ___ / Domiciled in ___

Was This Author's Contribution to the Work — Anonymous? ☐ Yes ☐ No — Pseudonymous? ☐ Yes ☐ No — If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). **See instructions**

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a **Year in Which Creation of This Work Was Completed** 2004 Year — This information must be given in all cases.

b **Date and Nation of First Publication of This Particular Work** — Complete this information ONLY if this work has been published. — approximately Month 11 Day 25 Year 2004 — United States Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

FragranceNet.com, Inc., 104 Parkway Drive South, Hauppauge, New York, NY 11788

See instructions before completing this space.

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE — OFFICE USE ONLY

APPLICATION RECEIVED FEB 21 2006

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED FEB 21 2006

FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

*Amended by C.O. on authority of
phone call from Catherine M. Clayton, Esq.
on March 7, 2006.

EXAMINED BY

CHECKED BY

FORM VA

☐ CORRESPONDENCE
Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

5

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
☐ Yes ☑ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
a. ☐ This is the first published edition of a work previously registered in unpublished form.
b. ☐ This is the first application submitted by this author as copyright claimant.
c. ☐ This is a changed version of the work, as shown by space 6 on this application.
If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

6

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a — See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

7

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

b

Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022

Area code and daytime telephone number (212) 318.6084 Fax number (212) 230.7781

Email rls@paulhastings.com

8

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶
☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☑ authorized agent of FragranceNet.com, Inc.
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.
Dennis M. Apfel Date 2/10/06

Handwritten signature (X) ▼
X

9

Certificate will be mailed in window envelope to this address:

Name ▼ Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP
Number/Street/Apt ▼ 75 East 55th Street
City/State/ZIP ▼ New York, NY 10022

• Complete all necessary spaces
• Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

Certificate of Registration

SEAL OF THE UNITED STATES COPYRIGHT OFFICE 1870

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Form VA
For a Work of the Visual Arts

VA 1-340-782

EFFECTIVE DATE OF REGISTRATION
Feb 21 2006
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

Title of This Work ▼
FragranceNet.com Photographs (Group 3)

NATURE OF THIS WORK ▼ See instructions
Photographs

Previous or Alternative Titles ▼
Group Registration/Photos (approximately 382 photos in grouping)

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼
Publication as a contribution to a Web site

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a **NAME OF AUTHOR ▼** *Employer for hire of:
FragranceNet.com, Inc. Matthew Hulser

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☑ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ______
Domiciled in United States

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☑ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b **Name of Author ▼**

Dates of Birth and Death
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ______
Domiciled in ______

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es). See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3

a **Year in Which Creation of This Work Was Completed**
2005 Year
This information must be given in all cases.

b **Date and Nation of First Publication of This Particular Work** approximately
Complete this information ONLY if this work has been published.
Month 11 Day 10 Year 2005
United States Nation

4

See instructions before completing this space.

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
FragranceNet.com, Inc., 104 Parkway Drive South, Hauppauge, New York, NY 11788

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY
APPLICATION RECEIVED FEB 21 2006
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED FEB 21 2006
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE

*Amended by C O. on authority of phone call from Catherine M. Clayton, Esq. on March 7, 2006.

EXAMINED BY | FORM VA

CHECKED BY

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? **5**

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. **6**

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼ **a**

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ **b**

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. **7**

Name ▼ Account Number ▼ **a**

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼ **b**

Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022

Area code and daytime telephone number (212) 318.6084 Fax number (212) 230.7781

Email rls@paulhastings.com

CERTIFICATION* I, the undersigned, hereby certify that I am the **8**

check only one ▶
☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☒ authorized agent of FragranceNet.com, Inc.
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Dennis M. Apfel Date 2/13/06

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address: **9**

Name ▼ Catherine M. Clayton, Esq.
Paul, Hastings, Janofsky & Walker LLP

Number/Street/Apt ▼ 75 East 55th Street

City/State/ZIP ▼ New York, NY 10022

• Complete all necessary spaces
• Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

EXHIBIT B